

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 March 2003 IN THE MATTER OF:

HITEK LEARNING SYSTEMS, INC.,
Complainant,

v.

Case No.: 2002-JTP-0006

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION,

and

GRANT OFFICER, U.S. DEPARTMENT OF LABOR,
EMPLOYMENT AND TRAINING ADMINISTRATION
Respondents.

ORDER OF DISMISSAL

Respondent, Grant Officer, United States Department of Labor, Employment and Training Administration, moves to dismiss Complainant, Hitek Learning Systems, Inc.'s *Request for Hearing and Appeal from Final Determination* filed on July 10, 2002 under the Job Training Partnership Act (JTPA) at 29 U.S.C. § 1501 *et seq* and the regulations promulgated thereunder at 20 C.F.R. Part 627.¹ On November 5, 2002, the undersigned issued an *Order* in response to the Grant Officer's *Motion to Dismiss* requesting that the parties state: (1) what regulatory provisions are applicable to this case; (2) whether Hitek Learning Systems filed a complaint with the Grant Officer; and (3) whether the Grant Officer's June 4, 2002 letter constitutes a "final determination." Complainant and the Grant Officer filed responses on November 27, 2002. The South Carolina Employment Security Commission (SCESC) filed a response on December 2, 2002.

Factual Background

On or about April 1, 1999, Complainant was awarded a grant (Grant #96794K) by Respondent SCESC under Title II B of the JTPA for the purpose of providing economically disadvantaged youth located in certain specified counties of South Carolina with the opportunity to improve their basic educational skills and employment competencies. The present case arises out of a determination by SCESC to withhold program funds from Complainant pending resolution of an

¹ Although the JTPA enabling statute at 29 U.S.C. § 1501 was repealed upon enactment of the Workforce Investment Act of 1998 at 29 U.S.C. § 2911 *et seq.*, this case continues to fall under the JTPA provisions.

investigation by the Office of Inspector General of the Department of Labor (OIG)². The OIG was investigating allegations that Complainant had encouraged participants to perform poorly on tests qualifying them for admission. The results of the qualifying tests apparently affect the amount of money Complainant receives under the grant

Complainant sought relief by filing a formal grievance with the South Carolina Procurement Review Panel on February 12, 2001. The local administrative Workforce Board denied the requested relief by letter of the Chair dated March 26, 2001. The Board ruled that no funds could be distributed due to a pending investigation, even though the Complainant had completed its obligations under the grant. Complainant's exceptions thereto were denied by the SCESC.

On September 21, 2001, Complainant filed a request for *Hearing and Appeal from Final Determination* with the U. S. Department of Labor, Office of Administrative Law Judges. The case was assigned to Judge Pamela Lakes Wood, who, in an Order dated January 25, 2002, dismissed Complainant's hearing request for lack of jurisdiction because no complaint had been filed with the Grant Officer under Part 636. The procedural requirements of the regulations require that the Complainant first seek a determination of the Grant Officer for the U. S. Department of Labor before jurisdiction of the Office of Administrative Law Judges attaches. 20 C.F.R. § 636.10(a)(1) (2001).

Consequently, Complainant filed an appeal from the SCESC Hearing Panel to the DOL Grant Officer. After a review of the matter, the Grant Officer informed the Complainant on June 4, 2002 that the SCESC's decision to withhold payment to the Complainant while the OIG's investigation is open and active does not violate the JTPA. The Grant Officer also informed the Complainant that his decision constituted final agency action under 20 CFR § 627.602(a).

On July 10, 2002, the Complainant filed its *Request for Hearing and appeal From Final Determination* requesting review of the Grant Officer's determination pursuant to 20 CFR § 636.10. The Grant Officer's *Motion to Dismiss* contends that the OALJ lacks subject matter jurisdiction over the dispute.

20 C.F.R. Part 636

²The Grant Officer's brief filed on November 26, 2003 is correct wherein it states that the undersigned Administrative Law Judge's November 5, 2002 Order inaccurately depicted the facts relating to who withheld the contract funds in question. The Order states that the Department of Labor withheld contract funds, and that the Grant Officer in his Motion to Dismiss states that the Grant Officer was going to withhold program funds pending resolution of the OIG investigation. As the brief correctly points out the South Carolina Employment Security Commission not the Department of Labor has withheld the funds and the Motion to Dismiss actually states that the SCESC notified Complainant that it was going to withhold the funds.

Complainant argues that the OALJ has jurisdiction under 20 CFR § 636.1, and more specifically, under § 636.10.

20 CFR § 636.1 provides that Part 636 of the regulations governs adjudications of certain disputes under Title IV of the JTPA. However, the program in question, is funded by monies to the State of South Carolina under Title II which is governed by Part 627 of the regulations. Thus, §§ 636.1 and 636.10 do not confer jurisdiction on OALJ over this matter.

20 C.F.R. Part 627

This Office's jurisdiction in this case is governed by Part 627 as § 627.100 sets forth requirements for implementation of programs under Titles I, II, and III of the JTPA including grievance procedures for grant recipients and sub-recipients of funds under these titles. 20 C.F.R. § 627.601(a)(1)-(5) governs consideration at the federal level of complaints by recipients or sub-recipients alleging violations of the JTPA or its implementing regulations. It provides:

(a) The types of complaints and allegations that may be received at the Federal level for review include:

- (1) Complaints for which the recipient has failed to issue a timely decision as required by § 627.503 of this part;
- (2) Alleged violations of the Act and/or the regulations promulgated thereunder resulting from Federal, State, and/or SDA and SSG monitoring and oversight reviews;
- (3) Alleged violations of the labor standards provisions at section 143 of the Act;
- (4) Alleged violations of the relocation provisions in section 141(c) of the Act; and
- (5) Other allegations of violations of the Act or the regulations promulgated thereunder.

The purpose of the Complainant's request for hearing here is to contest SCESC's determination that it does not have authority to release program funds to Complainant which are the subject of an OIG investigation until that investigation is resolved. The Respondent argues that this dispute is not the type of complaint that § 627.601(a) contemplates will be reviewed at the federal level in that the complaint does not involve a violation of the Act or of the regulations. The difficulty with the Respondent's argument is that it is inconsistent with the action of the Grant Officer here, as the Grant Officer did in fact review the determination of the SCESC. The Grant Officer's June 4, 2002 letter to the Complainant stated that he reviewed SCESC's decision to withhold payments, and determined that its decision to withhold payments while the OIG investigation of the Complainant was open and active does not violate the JTPA. It is from this letter, and the Grant Officer's characterization of his determination as a final agency action under 20 CFR § 627.602(a)(2), that the present appeal was filed.

Nonetheless, whether or not § 627.601(a) permits review of this complaint at the federal level by the Grant Officer is not determinative of whether OALJ has jurisdiction, here. Subpart H, of Part 627, Hearings by the Office of Administrative Law Judges, governs whether OALJ has jurisdiction over a final agency action under Part 627. Section 627.800 thereof sets forth the scope and purpose of hearings before the Office of Administrative Law Judges. It limits the jurisdiction of OALJ to those complainants identified in §§ 141(c), 144(d), 164(f) and 166(a) of the Act. Section 141(c) involves job losses due to an employer's relocation, § 144(d) involves labor standards, and § 164(f) requires emergency termination or suspension of financial assistance to recipient by the Secretary or her designee who was appointed with the advise and consent of the Senate. Section 166(a) is likely the basis for most appeals to the OALJ as it provides jurisdiction where an applicant is dissatisfied with DOL's award of financial assistance or where the Secretary has imposed a corrective action or sanction. However, none of these sections of the Act pertain to the subject of Complainant's request for hearing here. Section 166(a) does not confer jurisdiction as the Grant Officer's action was not a corrective action or the levying of a sanction against Complainant. Thus, the dispute which is the subject matter of this complaint is outside the scope of the hearings by the OALJ that are authorized by § 627.800, and OALJ has no jurisdiction otherwise to review the Grant Officer's determination.

In actuality, OALJ's jurisdiction under Part 627 is limited to reviewing actions of the DOL when DOL levies a sanction or responds to an application for an award. It does not extend to reviewing disputes such as that between Complainant and SCESC.

Accordingly,

ORDER

IT IS ORDERED that this matter be dismissed for lack of jurisdiction.

A

Thomas M. Burke

Associate Chief Administrative Law Judge